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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,235	02/18/2004	Brian D. Schneider	SCBP:101US	2365
7590 09/21/2005			EXAMINER	
S. Peter Konzel, Esq. Simpson & Simpson, PLLC 5555 Main Street Williamsville, NY 14221-5406			GUTMAN, HILARY L	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/781,235

Applicant(s)

SCHNEIDER, BRIAN D.

Examiner

Hilary Gutman

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-10,12,13,16-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-10,12,13,16-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-4, 8-10, 12, 16-18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Brewer.

Brewer (3,961,585) discloses a device 10 for securing cargo comprising: at least first and second anchoring straps (78A, 78B); means (82A) for adjusting the length of at least one of said first and second anchoring straps; at least two cargo securing straps (156-166 & 178-186); at least first and second hub means (22-30 & 104-110); wherein said at least first and second hub means slidably secure each of said at least two cargo securing straps therebetween (therebetween side 14 and side 16), each of said first and second hub means secures a first end of each said first and second anchoring straps for rotatable sliding movement therewith, and a second free end of one of said first and second anchoring straps comprises a fastener means (74A, 74B).

With regard to claim 3, said anchoring straps comprise loop means (Figures 4-6) for securing said anchoring straps to a pallet (P).

With regard to claim 4, said loop means are adapted for slidably securing said fastener means for securing said anchoring straps.

With regard to claim 8, said hub means is a closed ringed structure.

Art Unit: 3612

With regard to claim 9, said closed ringed structure is circular and said anchoring straps and said at least two cargo straps are adapted for slidable movement thereon.

With regard to claim 10, said closed ringed structure is fabricated from metal.

With regard to claim 12, said metal is hardened.

With regard to claim 16, one of said at least two cargo securing straps is operatively arranged to traverse the sides of said cargo at a position proximate a topside (Figure 1) of said cargo.

With regard to claim 17, one of said at least two cargo securing straps is arranged to traverse the sides of said cargo at a position at or above the center of gravity of said cargo.

With regard to claim 18, the device comprises at least three cargo securing straps wherein two of said at least three cargo securing straps is arranged to traverse the sides of said cargo at positions at or above the center of gravity of said cargo.

For claim 21, Brewer (3,961,585) discloses a device for securing cargo comprising: at least two hub means 22A, 22B; at least two cargo securing straps 164, 168; and, at least first and second anchoring straps 80A, 80B, wherein at least one of said first and second anchoring straps 80A, B comprises means 82 for adjusting the length thereof, said at least two hub means slidably secure said at least two cargo securing straps therebetween, each of said at last two hub means slidably secures a first end of each said first and second anchoring straps, and a second free end of each said anchoring strap comprises a fastener means 74A, 74B.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer, as applied to claim 4 above and in view of Dew et al.

Brewer discloses a device for securing cargo comprising a J-hook (74) fastening means having one end (200) closed and one open end (204) operatively arranged to be closed (206).

Brewer lacks that the fastening means could comprise a S-hook.

Dew et al. teach a device for securing cargo (cargo restraining apparatus 10) comprising a S-hook (31) fastening means.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device for securing cargo of Brewer, to employ S-hooks, as taught by Dew et al. in order to employ a variety of fastening means.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer, as applied to claim 1 above and in view of Dickerson.

Brewer discloses a device for securing cargo comprising a means for adjusting the length of the anchoring straps.

Brewer lacks that the means for adjusting the length could be a ratchet clamp.

Dickerson teaches device for securing cargo (tie down device 10) employing a ratchet clamp (22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device for securing cargo of Brewer, to employ a ratchet clamp, as taught by Dickerson in order to secure the cargo better.

### ***Response to Arguments***

6. Applicant's arguments filed 8/17/05 have been fully considered but they are not persuasive.

The applicant argues Brewer fails to disclose an anchoring strap with a second free end attached to a fastener means. The examiner disagrees and believes the reference clearly shows all of the recited features as broadly claimed and interpreted.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a second free end attached "directly" to a fastening means as claimed in claim 1) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant is correct in interpreting the Brewer reference to include straps 78A and 78B as anchoring straps which are attached to a second ring. However, the examiner further notes that the straps are then (indirectly) attached to fastening means as the applicant further points out (a securing device in the form of hooks 74A are connected to each one of rings 62A-72A).

Art Unit: 3612

Alternatively, the combination of the rings 62A-72A and hook 74A can apparently be considered a fastening means.

Therefore, Brewer clearly anticipates claims 1 and 21 as currently recited and broadly interpreted. The reference shows each of the claimed elements including a second free end of the anchoring straps directly attached to a second ring and indirectly attached to a fastening means.

With regard to the Dew reference, the applicant argues the combination of Brewer and Dew fails to disclosed all of the limitations of claims 5 and 6. The examiner disagrees and notes the combination clearly disclosed the elements recited.

With regard to the argument that Brewer teaches away from the combination with Dew, the examiner disagrees because the combination is not eliminating the use of force distribution rings of any kind but is simply providing for the substitution of an S-hook for a J-hook. This substitution would not apparently affect the vertical force distribution on the fastening means.

For the Brewer-Dickerson combination, the applicant argues the combination does not disclose each element of claim 13. The examiner disagrees. The anchoring straps of Brewer indirectly attach to fastening means and are therefore considered “anchoring straps” are broadly recited and interpreted.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.



Art Unit: 3612

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hilary Gutman

September 15, 2005